

(2019) 09 SHI CK 0053

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 4263 Of 2015

Prem Lata Sanehi

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 03-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 09 SHI CK 0053

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Subhash Mohan Sneh, Shashi Shirshoo, Rajinder Singh, Sudhir Bhatnagar, Sanjeev Sood, Kunal Thakur, Dalip K. Sharma

Final Decision : Dismissed

Judgement

Sandeep Sharma, J

1. Certain undisputed facts, as emerge from the pleadings and projected by the learned counsel representing the parties are that in the year, 1976-77 Government of India launched Creche Scheme throughout the country for the children of working mothers. In the year, 2006 respondent No.1 renamed the aforesaid Creche Scheme as "Rajiv Gandhi National Creche Scheme for the children of Working mothers". In the year, 1982 petitioner came to be appointed as Creche Teacher at Stangidhar, District Kullu, Himachal Pradesh. In the year, 1983-84 petitioner while serving as Creche Teacher, also did Balsevika Training Course. It is also not in dispute that petitioner after having rendered her services as Creche Teacher retired from service on 31.8.2014.

2. In nutshell, the grouse of the petitioner is that since she had undergone Balsevika Training Course on the pretext that after completion of such training, she would be given status of Junior Basic Teacher, she ought to have been promoted in terms of Clause 10 of R&P Rules framed by the respondent for the Recruitment of Balwadi Teacher, wherein 10% appointments are to be made from

the post of Balsevikas and 90% by direct recruitment. Petitioner has claimed that since she discharged her duties w.e.f.1982 continuously and uninterruptedly as Balsevika, she is entitled to promotion to the post of Balwadi Teacher, but it appears that her such request never came to be paid any heed by the respondents, as a consequence of which, she was compelled to approach this Court in the instant proceedings under Article 226 of the Constitution of India, seeking therein following reliefs:-

"(i) That writ of mandamus may kindly be issued, directing the respondents to give promotion to the petitioner as per R& P Rules to the post of Balwadi Teacher on completion of her 10 years service i.e. from the year, 1992 since the petitioner was appointed in the year, 1982.

(ii) That writ of mandamus may kindly be issued, directing the respondents to give regular pay scale to the petitioner(Creche Teacher/Balsevika) at par with Balwadi Teacher from the due date of her entitlement for the same.

(iii) That writ of mandamus may kindly be issued directing the respondents to extend the benefit of pension and pensionary benefits in favour of the petitioner from the date of her retirement I.e 31.08.2014 onwards with all consequential service benefits."

3. Petitioner has also made reference to the judgments passed by this Court in CWP (T) No. 12225 of 2008, titled as Kumari Meera Thakur and others Vs. State of Himachal Pradesh and others and CWP(T) No.12348 of 2008, titled as Kubja Sharma vs. State of Himachal Pradesh and others, wherein respondents were directed to consider the case of the petitioners therein to revise the pay scale of Rs. 950-1800/- to Rs.3120-5160/- with effect from 1.1.1996. Careful perusal of the orders passed by this Court in the aforesaid cases, reveals that this Court directed the petitioners therein to file representations before the appropriate authorities for redressal of their grievance, but since their representation were rejected, petitioners in the aforesaid writ petitions, again approached this Court in CWP No.7364 2010 titled as Meera Thakur and others versus State of HP and others, which ultimately came to be disposed of on 28.6.2011. Pursuant to the aforesaid judgment passed by this Court, the respondents extended the benefit of revised pay scale in favour of Balwadi Teachers and their services were also regularized. In the aforesaid background, petitioner has claimed that since she has rendered long service of 30 years prior to her retirement and she has been retired from the service w.e.f.31.08.2014 at the meagre salary of Rs. 1400/- per month, respondent may be directed to promote her in terms of Clause 10 of R & P Rules to the post of Balwadi Teacher. Petitioner has further claimed that since her appointment is governed by the guidelines as are applicable to the Balwadi Teachers coupled with the fact that she alongwith Balwadi Teachers had undergone same and similar Balsevika Training, she ought to have been given regular/ revised pay scale during her services.

4. Having heard learned counsel representing the parties and perused the

material available on record, this Court is of the view that claim put forth by the petitioner is not justifiable because all the respondents in unison have stated before this Court that petitioner was employed as Creche Teacher/ Balsevika on fixed honorarium in terms of the guidelines and terms and conditions contained in "Rajiv Gandhi National Creche Scheme" implemented by the Ministry of Women and Child Development. It has been specifically stated by respondent No.5, who is appointing authority of the petitioner, that since petitioner came to be appointed under the scheme floated by the Indian Council for Child Welfare on the fixed remuneration, she cannot claim regularization as well as parity with Balsevikas appointed under State Sponsored Schemes. Respondent No.5 has categorically denied that petitioner was given impression that after having obtained Balsevika Training Course, she would be given status of Junior Basic Teacher.

5. Respondent No. 5 has submitted that since 2002 after framing of the Recruitment and Promotion Rules, no Balwadi Teacher was appointed and promoted because centres were closed and such claim of the petitioner is not justified. It has been further stated that functioning of both the schemes are different. Creches are meant for children of Working Women, whereas Balwadi Centres are/were being run for all type of beneficiaries. Rajiv Gandhi National Scheme placed on record clearly reveals that there is no provision of fixed pay scale to the Creche Teacher, whereas on the other hand, the Balwadi Teachers appointed under State Sponsored Scheme are paid regular pay scale.

6. This Court with a view to find out the nature of appointment of the petitioner, directed the General Secretary, Himachal Pradesh State Council for Child Welfare (respondent No.5) vide order dated 7.8.2019 to file supplementary affidavit disclosing therein the nomenclature of the post held by the petitioner and to clarify whether mere awarding of Balsevika Training Certificate by the Indian Council for Child Welfare would entitle a person to the benefits, which otherwise are available to Balsevikas appointed by the Council in Balwadis.

7. In supplementary affidavit, General Secretary, H.P. State Council for Child Welfare, has stated that petitioner was initially appointed as Balsevika under the Creche Programme financed by the Indian Council for Child Welfare, New Delhi on the fixed honorarium of Rs. 190/- per month, which subsequently came to be enhanced from time to time. It has been further stated that mere on the basis of Balsevika Training Certificate, Balsevikas are not entitled for the post of Balwadi Teacher because awarding of Balsevika Training Certificate by the Indian Council for child Welfare, New Delhi is/ was meant for taking better care of the Children in the age group of 0 to 5 years.

8. In the case at hand, neither appointment letter, if any, has been placed on record by the petitioner to demonstrate that she was engaged permanently against any regular post nor any material has been placed on record suggestive of the fact that similar situate persons ever came to be regularized under

"Rajiv Gandhi National Creche Scheme". Careful perusal of the judgment rendered by this Court in Kumari Meera Thakur and others vs. State of Himachal Pradesh and others (supra) clearly suggest that Kumari Meera Thakur and Smt. Kubja Sharma are /were working as Balwadi Teachers and they had filed the petitions for allowing the revised pay scales to which they were otherwise entitled as per the terms and conditions of the appointment and as such, petitioner, who was working under Central Sponsored Scheme can not claim parity with aforesaid petitioners.

9. No doubt, petitioner rendered her services for 30 years as Balsevika (Creche worker) on a meagre honorarium, but since there is no provision, if any, under the scheme, under which petitioner came to be initially appointed to regularize the services of Balsevika/Creche Worker, case of the petitioner as well as other similar situated persons could not be considered in terms of Clause 10 of the R & P Rules framed by the respondent for the recruitment of Balwadi Teacher.

10. Moreover, careful perusal of Recruitment and Promotion Rules (Annexure P-5) placed on record though suggests that Balsevikas appointed on honorarium basis having 10 years service in the Council are entitled to the promotion to the post of Balwadi Teacher in H.P. State Council for child welfare Shimla, but Clause-7 of the Recruitment and Promotion Rules, which otherwise appears to be applicable for appointment of Balwadi Teachers in the State Sponsored Scheme, suggests that person claiming promotion to the post of Balwadi Teacher must have passed matriculation with 2nd Division. Clause-8 of the Recruitment and Promotion Rules clearly provides qualification provided under Clause 7 of the Recruitment and Promotion Rules, as referred above, would also apply to the case of the promotees, meaning thereby Balsevikas appointed on honorarium basis having 10 years service can also claim promotion to the post of Balwadi Teacher subject to their passing matriculation examination with 2nd Division. In the case at hand, it is quite apparent from the matriculation certificate placed on record (Annexure P-1) that petitioner passed matriculation examination in the year, 1971 in third Division. Hence, no benefit, if any, can be claimed by the petitioner while seeking promotion in terms of Recruitment and Promotion Rules.

11. Consequently, in view of the above, the present petition is dismissed alongwith pending applications, if any.